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Supreme Court Of The United States

October Term 1966
No. 588

THE FIRST HARDIN NATIONAL BANK and THE FARMERS BANK OF VINE GROVE, KENTUCKY, - - - - - - - - Petitioners,

versus

FORT KNOX NATIONAL BANK and JAMES J. SAXON, Comptroller of the Currency of the United States, - - Respondents.

SUPPLEMENTAL BRIEF

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LAWYERS PRINTING COMPANY, LOUISVILLE, KENTUCKY

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FORT KNOX NATIONAL BANK and
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Currency of the United States, - *Respondents.*

SUPPLEMENTAL BRIEF

In accordance with the authority granted by Rule 24(4) of the Rules of this Court, Petitioners submit this Supplemental Brief.

Respondents have raised four points in their Responses to Petitioners' Application for a Writ of Certiorari which Petitioners judge need clarification or correction.

I

Respondent Fort Knox National Bank argues that there is no conflict between the decision of the Sixth

Circuit Court of Appeals in the case below and the decision of the Court of Appeals for the District of Columbia in *Commercial State Bank* v. *Gidney,* 174 F. Supp. 770 (D.C. D.C. 1959), aff'd per curiam, 278 F. 2d 871 (D.C. Cir., 1960). Any reading of these decisions reveals this position to be untenable. In *Commercial State Bank* v. *Gidney, supra,* the Court extensively reviewed state law and cases to see if the Comptroller of the Currency made a correct determination of state law. In the case below the Sixth Circuit Court of Appeals made no such search and relied upon the case of *Howard* v. *Commissioners of the Sinking Fund,* 344 U.S. 624 (1953). The conflict between these two decisions results from opposing views of the basic nature of the Comptroller's findings as to state law. The District of Columbia Circuit views such findings as findings of law and as such subject complete judicial review. The Sixth Circuit Court of Appeals held below that the finding "is a factual finding", and subject only to inquiry as to its arbitrariness, capriciousness, or contrariety to law. It is Petitioners' position that the District of Columbia Circuit is correct and the failure of the Sixth Circuit Court of Appeals to fully review the Comptroller's determination on the point has denied Petitioners their day in Court.

II

On page 10 of the Response to the Petition, Respondent Fort Knox National Bank quotes from the

case of *Board of Commissioners* v. *Board of School Commissioners,* 130 Ind. App. 506, 166 N.E. 2d 880 (1960) as follows:

> "The legal concept of jurisdiction and the geographical structures of a state are not one and the same."

The point made in the above cited case is exactly the point Petitioners have been making throughout this litigation. Article 1, Section 8 of the Constitution of the United States provides for exclusive Federal *jurisdiction* over military reservations. In light of this section of the Constitution, the states have no power to exert jurisdiction over military reservations unless such jurisdiction is specifically granted to the states by Federal statute. In the absence of such a statute, any attempt to exert jurisdiction over Federal property is patently unconstitutional. To construe the word "county" as found in Chapter 287 of the Kentucky Revised Statutes to include Fort Knox is to extend the state's jurisdiction to a Federal reservation which is, of course, an unconstitutional construction. As has been shown in Petitioners' Brief (pages 10 through 13), absent such a saving statute, the Kentucky Court of Appeals has uniformly held the word "county" when used in a regulatory or taxing statute as not including Federal territory.

III

Respondent Fort Knox National Bank apparently believes that the Petitioners are calling into question

the validity of its Meade County Branch Bank located on the Fort Knox military reservation. Respondent has missed the point. Under Petitioners' theory of the case, the Fort Knox Meade County Branch is valid because the word "county" in the Kentucky Banking Act does not apply to military reservations, and, therefore, the Comptroller's allowance of the establishment of the branch has not violated the provisions of 12 USC Section 36(c). What Petitioners do object to is the end result if Respondent is allowed to establish a branch bank in Hardin County outside the Fort Knox military reservation. To allow the establishment of such a branch, it must be found that the principal office of the bank on Fort Knox is within Hardin County within the meaning of Chapter 287 of the Kentucky Revised Statutes. If so, then by the same logic, the branch on the post within the confines of what was formerly Meade County is within Meade County, and this results in the National Bank extending its areas of business into places denied to a state bank. As is stated in Petitioners' Petition for a Writ of Certiorari, Petitioners believe this would result in a substantial violation of the spirit and intent of the National Banking Act. It would inequitably give Respondent the best of both worlds.

Respondent, the Comptroller of the Currency, rebuts the above stated argument by claiming that the Meade County branch bank would not be violative of 12 USC, Section 36(c) because it is authorized under 12 USC, Section 90 and that these two sections are mutually exclusive of each other. He cites *State of*

Texas v. *National Bank of Commerce of San Antonio,* 290 F. 2d 229 (5th Cir., 1961), cert. denied *sub nom. Falkner, Banking Commissioner* v. *National Bank of Commerce of San Antonio,* 368 U.S. 832 (1961), in support of this contention (see Footnote 5, page 8, Respondent's Brief). Accepting for the purposes of argument that this is the law, the Respondent becomes trapped in the basic jurisdiction argument raised on page 8 of Petitioners' Petition for a Writ of Certiorari.

If Respondent's interpretation of 12 USC, Section 90 is correct, then it is because the Federal Government has exclusive jurisdiction over federal property and its administration, which includes the power to allow certain convenience facilities to exist on the post with which the states may not interfere. By making this argument the Respondent admits that there are two separate jurisdictions involved in this case, i.e., the Fort Knox Military Reservation and Hardin County. It is this fact that distinguishes *Howard* v. *Commissioners,* 344 U.S. 624 (1953), from the instant case, for in the *Howard* case there was *concurrent* jurisdiction over the federal property. When presented with these facts, the Kentucky Court of Appeals has repeatedly defined the word "county" as found in the Kentucky Statutes as exclusive of federal property.

IV

On page 12 of Respondent Fort Knox National Bank's reply it is contended that Petitioners have cited the case of *State of South Dakota* v. *National*

Bank of South Dakota, 219 F.Supp. 842 (D.C. S.D., 1963), aff'd 335 F. 2d 444 (8th Cir., 1964), cert. denied, 379 U.S. 970 (1964), for the proposition that doubts concerning state law authorization of branches should be resolved against permitting the branch. Such is not the case. The case was cited in support of position that the intent of the National Banking Act is to maintain a balance between dual banking systems. The authority for resolving doubts as to authorization of banks under state law against the authorization is the statute itself. 12 USC, Section 36(c) reads in part:

> "A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time *expressly authorized* to State banks by the law of the State in question; . . ." (Emphasis added.)

Since no express authority exists in Kentucky for the establishment of branches in cases such as presented by the facts of the case now before this Court, any doubts as to the validity of the Comptroller's action should be resolved against his action.

Respectfully submitted,

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CERTIFICATION

I hereby certify that on this day, Friday, October 28, 1966, I have served the foregoing Supplemental Brief upon the parties by mailing a copy of same to:

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